



D-1083

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 08/889,033)	
)	
In re Application of)	Art Unit 2621
Frazzitta, et al.)	
)	
Confirmation No.: 2912)	Patent Examiner
)	Tung Vo
Filed: July 7, 1997)	
)	
Title: Transaction System)	

Mail Stop Patent Ext.
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Petition Under 37 CFR 1.181

Kindly enter the following petition without prejudice. The Applicants petition for review of the determined length of the patent term extension. The Applicants respectfully submit that they are entitled to a patent term extension of at least 5 years, even though the Office improperly caused this application to be pending more than 13 years.

The Applicable Legal Standards

Former 35 U.S.C. § 154(b)

(2) Extension For Appellate Review

If the issue of a patent is delayed due to appellate review by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended for a period of time but in no case more than 5 years. A patent shall not be eligible for extension under this paragraph if it is subject to a terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review.

(4) Length Of Extension

The total duration of all extensions of a patent under this subsection shall not exceed 5 years.

37 CFR 1.701(c)(3)

The period of delay under paragraph (a)(3) of this section is the sum of the number of days, if any, in the period beginning on the date on which an appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

Facts of record

The record shows that the Application is not subject to a terminal disclaimer and the Applicants acted with due diligence. The record also shows the following dates and papers:

10/05/2001 1st Notice of Appeal filed

07/21/2005 1st BPAI decision

==> Duration from 10/05/2001 to 07/21/2005 = 1386 days

01/26/2006 2nd Notice of Appeal filed

09/21/2007 2nd BPAI decision

==> Duration from 01/26/2006 to 09/21/2007 = 604 days

The correct length of patent term extension

The Applicants submit that the total time of delay due to appellate review is:

1386 days + 604 days = 1990 days

However, this total time of delay (1990 days) exceeds the maximum allowable time of 5 years. Therefore, the correct length of the patent term extension should be 5 years.

Conclusion

Applicants' petition should be granted for the reasons presented herein. The undersigned is willing to discuss any aspect of this petition at the Office's convenience.

Respectfully submitted,



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